

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLIFTON A. PHILLIPS, JR.,

Plaintiff,

- vs. -

ROY A. GIRDICH, Superintendent, Upstate
Correctional Facility; JOHN J. DONELLI, First
Deputy Superintendent, Upstate Correctional
Facility; A. BOUCAUD, Deputy Superintendent
of Administration, Upstate Correctional Facility,

Defendants.

9:03-CV-1019
(DNH) (DRH)

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

JUN 27 2005

LAWRENCE K. BAERMAN, Clerk
UTICA

APPEARANCES:

CLIFTON A. PHILLIPS, JR.
Plaintiff, *pro se*
99-A-1263
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, NY 12953

DAVID N. HURD
United States District Judge

ORDER

Plaintiff, *pro se*, Clifton A. Phillips, Jr. commenced this action on August 18, 2003. Dkt. No. 1. By order filed August 25, 2003, this Court concluded that the original complaint filed by plaintiff did not comply with Rules 8 and 10 of the Federal Rules of Civil Procedure, and accordingly directed Phillips to file an amended complaint in this action. Dkt. No. 4.¹ Since the amended complaint Phillips filed in accordance with that order did not cure the deficiencies this Court believed existed regarding his initial pleading, he was afforded another opportunity to file an amended complaint if he

¹ Phillips' *in forma pauperis* application was granted by this Court in its August 25, 2003 order. Dkt. No. 4.

wished to proceed with this action. Dkt. No. 9. When the second amended complaint filed by Phillips did not appear to comply with the Federal Rules of Civil Procedure, this Court ordered that Phillips' second amended complaint be dismissed and issued a judgment dismissing this action. See Dkt. Nos. 11, 12.

Phillips subsequently filed an appeal with the Second Circuit regarding the dismissal of his action. Dkt. No. 13. The Second Circuit thereafter issued a decision relative to that appeal in which it determined that Phillips' original complaint states three claims that may be redressable under 42 U.S.C. § 1983, and that he should therefore be permitted to proceed with this action. See *Phillips v. Gordich*, 408 F.3d 124, 129-30 (2d Cir. 2005). The mandate from the Second Circuit was filed in the Northern District on June 17, 2005.

WHEREFORE, it is hereby

ORDERED, that the Clerk shall issue summonses and forward them, along with copies of Phillips' original complaint, to the United States Marshal for service upon the named defendants. The Clerk shall forward a copy of the summons and original complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order, and it is further

ORDERED, that a response to plaintiff's original complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the defendants, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

Any paper sent by a party to the Court or the Clerk must be accompanied by a

certificate showing that a true and correct copy of same was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a certificate of service showing that a copy was served upon all opposing parties or their attorneys will be returned, without processing. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action, including requests that he provide an original summons showing a complete title of this action, a civil cover sheet, sufficient copies of completed USM-285 forms and copies of his complaint (along with any exhibits attached thereto) for service upon the defendants. All parties must comply with all Local Rules of the Northern District of New York, including Local Rule 7.1, which discusses motion practice in this District. All motions must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Local Rules. Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in plaintiff's address; his failure to do same will result in the dismissal of this action. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff by regular mail.

IT IS SO ORDERED.

Dated: June 27, 2005
Utica, New York


United States District Judge